office. (JA 111). These Annual Reports were signed by Mr. Brosnan, Central's Chairman of the Board and Chief Executive Officer, whose headquarters are in D. C., and not by Mr. Dillard, Central's President, whose headquarters are in Savannah, Ga. (JA 111).

Central and its subsidiary, Savannah & Atlanta Ry., filed detailed Schedule A annual reports required by ICC under 49 U.S.C. Sec. 20. These reports were filed with the ICC in D. C. (JA 108). Central's 1964 Schedule A contained a verification under oath, executed in D. C. by Central's Comptroller, Mr. Divine, stating in part:

> "While the President and Board of Directors have the right to exercise control of the accounting of this company, they have delegated to the Comptroller the supervision of the books of account and the control of the manner in which such books are kept." (JA 108).

Similar verification was in the 1964 Schedule A of Savannah & Atlanta. (JA 108).

In its December 1964 monthly report of Employees, Services, and Compensation, filed with the ICC by Central, verification was by Mr. Luckett, Assistant Comptroller, and it bore the post office address for Mr. Luckett of "Washington, D. C." Similar verification and post office address were used in the monthly report of the Savannah & Atlanta for December 1964. (JA 108).

ICC records showed that Central was a party to two control proceedings before the ICC in Washington, D. C., namely those in which (a) the St. Louis-San Francisco Ry. Co. (Frisco) sought control of Central; and (b) Southern sought control of Central (JA 109).

After Southern won control of Central, Southern paid $30,859,842 for 96.22% of all Central shares. Southern combined substantial portions of its operations with those of Central, the object being the improvement of service and realization of economies for both companies. Steps toward

realizing the anticipated savings from the consolidation of the accounting, corporate secretary, treasury, tax, and other administrative functions were taken at once, as were the consolidation of operations such as freight agencies, yards and shops. (JA 106).

Most of Southern's principal officers are based in D. C., including:

1. Mr. Brosnan, President.
2. Mr. Franklin, Vice President—Operations.
3. Mr. Claytor, Vice President—Law.
4. Mr. Hamilton, Vice President—Marketing and Research.
5. Mr. Burk, Vice President—Sales.
6. Mr. Gidding, Vice President—Finance and Taxation.
7. Mr. Crane, Vice President—Engineering and Research.
8. Mr. Divine, Comptroller.
9. Mr. Young, Assistant to the President.
10. Mr. Smith, Treasurer. (JA 110).

Of these principal officers of Southern, four are also principal officers of Central, namely: Mr. Brosnan, Chairman of the Board and Chief Executive Officer; Mr. Divine, Comptroller; Mr. Smith, Treasurer; and Mr. Hamilton, Vice President—Marketing and Research. All official positions on the Savannah & Atlanta except the President are filled by officers of Southern. (JA 108).

Allegations of Plaintiffs

In support of plaintiffs' contention that Central and its Board of Directors had arbitrarily failed to pay preferred dividends for 1960 through 1964, the complaint alleged:

Beginning in 1955, Frisco applied for ICC approval to control Central by owning Central's stock. (JA 5). The

ICC rejected the application and ordered Frisco to divest itself of the Central shares. (JA 5).

Frisco then contracted in 1960 to sell Southern the Central shares, and Southern applied for ICC approval to control Central. (JA 5). While Frisco had sought control, Central paid preferred dividends—the last was for 1959. (JA 6). Thereafter, no preferred dividends have been paid. The Frisco-Southern contract provided that any Central preferred dividends were to go to Frisco, thus increasing the effective cost to Southern for the shares. (JA 6-7).

At all times from 1960 through 1963, Central had sufficient Available Net Income to pay each year the $5 preferred dividend (totaling $852,000 per year); and Central's consolidated surplus (available to pay dividends) at all times exceeded $27,000,000. (JA 4).

In support of its application to control Central, Southern advised the ICC that: Southern had been granted ICC approval to control other railroads which had then prospered under Southern's control (*Southern Ry. Co.—Control—Central of Georgia Ry. Co.*, 317 I.C.C. 557, 572 (1962)); that Southern control of Central would result in very large annual savings for both Central and Southern (*Ibid.*, p. 579); and that Southern relied on dividends on the Central shares to help meet Southern's acquisition costs (*Ibid.*, p. 559).[2]

The Complaint alleged that these representations to the ICC were meaningless and of no value to the minority

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[2] To show that Southern could easily buy the Central stock, Southern caused the ICC to find: "Giving effect to consummation of the transaction and anticipated economies, and *assuming a payout to applicant of 50 per cent of earnings applicable to the Central's common stock*, applicant's 1960 income of $42,720,657 available for fixed charges would be increased to $46,587,157 and the fixed-charge coverage, after tax adjustments, would be reduced to 3.44." (*Ibid.*, at 559, emphasis supplied).

stockholder, once Southern got control of Central, although Southern was one of the most efficient railways in the U. S. and its per cent of net income to gross revenue, is almost twice that of all class 1 railroads (JA 9); that Southern required Central to show no profit, so as to aid Southern in its continuing fight with the labor unions as to the protective provisions applicable to Central's employees (JA 10) (*Railway Labor Assn.* v. *U. S.*, 379 U.S. 199 (1964)); that Southern had caused Central unreasonably to increase its expenses for maintenance, in order to cause Central to show no earnings for federal income tax purposes (JA 10); that this policy caused no financial hardship to Southern, since it can deduct such "losses" of Central on the consolidated federal income tax return which Southern files with Central and other Southern subsidiaries (JA 10); that this policy injured Central's other preferred stockholders who own no other interest in Central or Southern and since the preferred is cumulative for only three years, if Southern succeeds in this action all additional arrearage since 1959 will be wiped out. (JA 11). Further, plaintiffs alleged that if Central succeeds in having this law suit dismissed, the Statute of Limitations of Georgia will bar at least two years of the cause of action alleged in the complaint. (Pl. Reply Br. in Ct. of App., p. 8).

Later Events

Instead of the savings forecast to the ICC of $3.8 million per year (JA 105), Central achieved far greater savings, although these savings have not been reported in net income. Southern forecast that its control would enable Central to eliminate between 814 and 824 jobs; actually, employment on Central dropped 2.3 times as much as forecast, from 3,421 employees in 1960 to 1,522 employees at the end of 1964, a decrease of 1,899 jobs. (JA 109). Similar economies were achieved on the Savannah & Atlanta, a wholly-owned, although indirectly owned, subsid-

iary of Central, with which Southern cannot file a consolidated federal income tax return. Savannah & Atlanta's net income rose from an average of $400,000 per year, before control (JA 4) to $1,042,231 in 1964, after control. (JA 108). Savannah & Atlanta's earnings are alone sufficient to pay the entire annual preferred dividend of $852,000. In 1964, Central received $1,949,825 in dividends from affiliated companies. (JA 108).

Neither Central, nor Directors Brosnah and Franklin, ever filed responsive pleadings to the complaint. Instead, they filed motions to dismiss. They presented no lists of names and addresses of witnesses; no abstracts of proposed testimony; and no detailed list of documents needed for their defense. Instead, they submitted only three short affidavits in support of their position, and their counsel made arguments. The District Court accepted some arguments of Central's attorneys as if they were verified facts. (App. B., p. 17a; Pl. Reply Br. in Ct. of App., p. 7).

The District Court granted the motions to dismiss. It rejected the argument that service was needed on a quorum of the Directors of Central; but decided that D. C. was *forum non conveniens.*

Plaintiffs appealed the decision on *forum non conveniens.* Defendants did not appeal the decision that a quorum was not required.

The Court of Appeals, by 2-1 decision, reversed the decision that D. C. was *forum non conveniens,* and remanded. It upheld the District Court's refusal to join Southern as defendant.

Defendants petitioned this Court for a Writ of Certiorari.

ARGUMENT

I. Introduction

This case is part of an effort begun more than ten years ago to seek fair play for Central's minority stockholders. Beginning in 1955, while Frisco sought ICC approval to control Central, plaintiff Victor A. Altman was an intervenor in the ICC proceeding. *Central of Georgia Ry. Co. Control,* 295 I.C.C. 563 (1957). Intervenor prayed the ICC, as a condition precedent to control, that Frisco be required to offer to buy the minority Central shares at a reasonable price to be fixed by the ICC (*Ibid.*, p. 566). Central opposed this relief to the minority stockholders. Division Four of the ICC granted intervenor's plea and ordered that control of Central be conditioned on Frisco's offer to buy the minority Central shares. (*Ibid.*, pp. 580-582).

Later, Division Four's approval of Frisco control was reversed by the full ICC because of the way Frisco had acted. *Central of Georgia Ry. Co. Control,* 307 I.C.C. 39 (1958). The full ICC not only denied Frisco's application; it asked for prosecution of Frisco stating:

> "Pursuant to section 12(1) of the act, we are referring this matter to the United States Attorney with request that prosecution be undertaken under the penal provisions of the act." (*Ibid.*, p. 44).

II. The Court of Appeals Found Abuse of Discretion

Not only did the Court of Appeals find abuse of discretion by the District Court in deciding the case; it specifically corrected errors by the District Court in questions of law and fact. By specifically correcting numerous District Court errors, the Court of Appeals *a fortiori* determined "abuse of discretion" by the District Court. By determining that the District Court committed error, the Court of Appeals *a fortiori* determined the District Court's findings and decision were not within the realm of its discretion.

1. The District Court incorrectly found that the *Williams* case was "clearly distinguishable." (App. B, p. 21a, fn. 61); the Court of Appeals found that *Williams* "most closely resembles" the present case. (App. A, p. 3a). (*Williams* v. *Green Bay & W. R. Co.*, 326 U.S. 549 (1946).

2. The District Court incorrectly found that the test for dismissal for *forum non conveniens* was ". . . evaluation of all factors related to the interests and conveniences of the parties and witnesses . . ." (App. B, p. 21a), wrongly relying on the less strict test of 28 U.S.C., Section 1404(a); the Court of Appeals found the test to be whether "vexation, harassment or oppressiveness" is caused Central (App. A, p. 4a), following this Court's decision in *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501, at 508 (1947).

The District Court never recognized that a more strict test was required for outright dismissal than was required for transfer (see App. B, pp. 21a, 22a); the Court of Appeals corrected the District Court, stating: "Dismissal requires a stronger showing of inconvenience than a transfer under Section 1404(a)." (App. A, p. 4a, fn. 2). In making this error, the District Court may perhaps have relied on the erroneous representations of petitioners that the tests for dismissal and transfer were the same. (JA 39).

3. The District Court incorrectly decided the controlling facts were the extent of Central's mileage in Georgia, and other physical aspects of the railroad (see, for example, App. B, pp. 15a-16a); the Court of Appeals found: "Much more important is the fact that financial control of Central is centered in this jurisdiction"; and that: "The operation of the railroad in other respects is not importantly involved." (App. A, p. 3a).

4. The District Court incorrectly found that Central's ". . . contacts with the District of Columbia are minimal." (App. B, p. 16a). As has been stated, the Court of Appeals found dispositive the financial control of Central

which is centered in Southern here in D.C. (App. A, p. 3a), and it found numerous, important contacts by Central with D.C. (App. A, p. 4a).

5. The District Court incorrectly found that plaintiffs "have not identified any witness within the District, and aside from the plaintiffs themselves, and the one director and possibly the handful of employees here, no prospect of any other is seen."—and that ". . . plaintiffs have pointed to no documentary evidence within the District . . ." (App. B, pp. 17a-18a);

The Court of Appeals correctly found that this "handful of employees" in D.C., which included the Chairman of Central's Board of Directors who is also President of Southern which controls Central; and Central's Comptroller who is also Comptroller of Southern, outweighed the possible outstate witnesses (App. A, p. 4a). Further, the Court of Appeals found that ". . . Central's Chief Executive Officer, its Comptroller, its Treasurer, and two of its Vice Presidents, are present in this jurisdiction, and detailed reports of the financial condition of Central are on file here with the Interstate Commerce Commission." (App. A, p. 3a).

6. The District Court incorrectly found that the *Koster* case was controlling (App. B, p. 22a); the Court of Appeals correctly distinguished the *Koster* case and pointed out that, unlike the situation in *Koster*, ". . . plaintiffs have substantial reasons for filing their suit in the District of Columbia." (App. A, p. 3a). *Koster* v. *Lumbermens Mutual Co.*, 330 U.S. 518 (1947).

7. Despite Southern's ownership of most of the stock of Central, the District Court incorrectly found as to Southern that ". . . there is nothing to suggest that it has in any way attempted to use its power to dictate or influence action by Central's directors." (App. B, p. 11a); the Court of Appeals correctly found that Southern was in control of Central. (App. A, pp. 3a-4a).

8. The District Court found that Central had 8 employees here, but it incorrectly failed to find that these 8 employees included 5 of Central's most important executive officers (App. B, p. 15a); the Court of Appeals correctly found that Central's Chief Executive Officer and Chairman of its Board of Directors, its Comptroller, its Treasurer, and two Vice Presidents, are present here. (App. A, pp. 3a-4a).

9. The District Court incorrectly found that the case "will compel detailed inquiry into various aspects of Central's internal affairs." (App. B, p. 17a); the Court of Appeals found that the case " . . . concerns the financial management of Central under its charter"; and that: "The operation of the railroad in other respects is not importantly involved." (App. A, p. 3a).

10. In sum, the Court of Appeals simply overruled as incorrect, the basic erroneous findings of the District Court that: (a) ". . . the bulk of the witnesses whose testimony must necessarily be heard are outside the District of Columbia . . ."; and (b) that: "Accessibility of sources of proof, another important factor, cannot be approached outside Georgia." (App. B, pp. 17a-18a).

The Court of Appeals corrected the District Court by finding that: ". . . control of Central by Southern outweighs the relevance, on the present issue, of the residence of a majority of the Directors, especially when Southern's headquarters and several of the officers directly concerned with the financial affairs of Central are present in this jurisdiction."; and by finding: "Though it is of some importance that twenty of the 21 directors are non-residents, 15 of them resident in Georgia, it does not appear that they would be needed as witnesses or, if any of them would be needed, how many and where they are." (App. A, p. 4a). In so finding, the Court of Appeals may well have relied on the fact that none of the resident Georgia directors own any shares of preferred stock whatsoever. (JA 109).

As shown, the Court went further than merely finding abuse of discretion by the District Court. The Court of Appeals found error after error of fact and law, and clearly corrected these errors.[3]

III. Forum Non Conveniens

As the Court of Appeals found: ". . . the District of Columbia was a reasonable and natural place for appellants to bring their action against Central . . ." (App. A, p. 4a).

1. Plaintiffs did not shop for a forum nor did they seek an inconvenient forum to harass defendants—plaintiffs sued in their home forum where they live and work.

2. Defendant Brosnan lives and works here.

3. Defendant Franklin lived nearby and worked here.

4. Defendant Central has a principal office here and does business here. Here is the headquarters of its Chairman of the Board of Directors and Chief Executive Officer; its Comptroller; its Treasurer; and two Vice Presidents. Stockholders owning more than 98.51% of Central preferred stock are here.[4] Financial control of Central is here, at the headquarters of Southern, and here is where are made the decisions not to pay Central preferred dividends. The books of account of Central are here, and here may be found all of the data needed to prepare Central's

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[3] Since no witnesses were heard by the District Court, and thus no question of credibility of testimony is involved, the Court of Appeals needed to give but little weight to the District Court's incorrect findings. *Perry* v. *Perry*, 88 U.S. App. D. C. 337, 190 F. 2d 601 (1951).

[4] Although Central admitted that Southern's ownership of Central preferred stock rose from 93% when suit began to 98.51% now, Central still used the old figure for the number of preferred stockholders. (Pet. Br., p. 5). Obviously the other minority preferred stockholders are now fewer in numbers and the record does not show who they are or how many are here.

voluminous 115 page Schedule A Annual Report to the ICC.[5]

5. Vital witnesses are here, including Central's high officers, and high officers of Southern. Voluminous information is here in the files of the ICC, since Central and Southern have been in many ICC proceedings here. In particular the ICC records on the two ICC proceedings for control of Central are here and nowhere else.

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[5] The Schedule A Annual Report to the ICC, of which this Court may take judicial notice since it is a statutorily required document, contains a truly enormous volume of information pertinent to the law suit. It contains over 115 pages of data, including dozens of schedules listing the Directors and principal general officers; the corporations controlling Central and those which Central controls; the largest stockholders of Central and its guaranties and suretyships; a general balance sheet and a detailed scheduling of many of the items in the balance sheet; the investments of Central, and its reserves; a full statement of the road and equipment property of Central and the depreciation taken on this equipment; a full statement of its equipment obligations; its obligations on income bonds and amounts payable to affiliated companies; federal income and other taxes accrued; a description of selected current liability accounts and other reserves; a statement of its depreciation reserve; its capital stock changes during the year; statements of capital surplus and retained income; and contingent assets and liabilities. There is a full statement of its income account for the year with a breakdown of its retained income—unappropriated account available to pay preferred dividends. Railway operating revenues are analyzed in great detail as are railway operating expenses. There is a complete study of the road property of Central and of its shop and power plant machinery. Separately operated properties are detailed. There is a statement of its rail line operations, including its switching and terminal traffic and cost statistics. There is a careful breakdown of the compensation paid by Central, both applicable to prior years and to this year's, and many other items.

All of this information, and more, is available here in D. C. through Central's Comptroller, whose headquarters are here. (JA 106-7).

Mr. F. A. Luckett, Central's Assistant Comptroller, is headquartered here (JA 108) and he filed with the ICC the detailed information on Employees' Services and Compensation (JA 108).

As the Court of Appeals noted, defendants failed to meet the test set out by this Court—namely—will suit here vex, harass or oppress the defendants? *Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501, at 508 (1947). Defendants' proof was of the sketchiest: three short affidavits; and unsubstantiated, incorrect arguments of counsel which the District Court erroneously accepted as fact.[6] No lists of witnesses were submitted nor did defendants list proposed testimony or detail what outstate documents were needed for their defense.

They failed even to meet the less stringent test of the proof needed for a transfer under 28 U.S.C. Section 1404(a).

The District Court used the wrong legal test, relying erroneously on defendants' argument that the two tests were the same. (JA 39). Further, the District Court erroneously found a factual basis of inconvenience of this forum.

The Court of Appeals corrected the District Court, finding the issue controlled by this Court's decision in *Williams* v. *Green Bay & W. R. Co.,* 326 U.S. 549 (1946), a case defendants neglected to cite to this Court, let alone distinguish.

Williams concerned the failure of a Wisconsin railroad to pay interest on debentures, and this Court stated it was similar to a suit to compel the declaration of dividends on stock. 326 U.S. at 557, fn. 10. The suit was brought in the United States District Court in New York, by New York residents, against a Wisconsin Corporation, a rail-

[6] Thus, the District Court accepted Central's counsel's unsubstantiated argument that "Central's recent reorganization" was a factor in non-declaration of dividends (JA 123). The reorganization was ended 18 years ago, in 1948. *Central of Georgia Ry. Co. Control,* 295 I.C.C. 563, 567 (1957); see, *Southern Ry. Co.—Control—Central of Georgia Ry. Co.,* 317 I.C.C. 557, 573 (1962). After 1948, Central paid preferred dividends for years, until Southern applied for control of Central in 1960. (JA 6).

road having all of its track, and most of its activities in Wisconsin. This Court reversed the lower court's holding that New York was *forum non conveniens* and held that the lower court improperly dismissed the case. This Court pointed out that although the doctrine of *forum non conveniens* was designed as an instrument of justice to prevent "vexatious" or "oppressive" suits (326 U.S., at 554) a suit to declare dividends, instituted in plaintiffs home forum, was not such a case.

This Court rejected objections to the jurisdiction based on the "internal affairs" argument, and pointed out (pp. 557-8):

> "If petitioners' theory of the case is right, the court need go no further than it would in enforcing any contract to pay money. If, as the majority of the court below thought, the payment of net income to the Class B debentures rested in the discretion of the directors, the question under the applicable local law would normally be whether their discretion had been abused. In case it were found to have been abused, the customary remedy is comparable to that which a court of equity affords in a suit for specific performance. The point is that, however this suit be viewed, the relief sought is not of such a character as to suggest that the federal court in New York would be so handicapped that it should remit the parties to Wisconsin. There is a suggestion that the parties should be remitted to Wisconsin because a construction of the covenant will primarily affect the interests of the public in that State where all of the respondent's railroad lines are located."

This Court rejected that argument, indicating that such considerations ". . . fall far short of those instances . . . where the federal court declines to act because its action might interfere with state proceedings, or state functions, or the functioning of state administrative agencies." (p. 558) This Court stated that it could not conclude that the maintenance of this suit in New York will be "vexatious or oppressive." (p. 559)

The Court of Appeals correctly applied the teachings of this Court in *Williams*, stating that the decisions rarely support invocation of the doctrine of *forum non conveniens*, and when they do, it is to prevent imposition on a defendant of undue vexation or oppressiveness. (App. A, p. 4a). The Court of Appeals was right when it decided that "... the District of Columbia was a reasonable and natural place for appellants to bring their action ..."; and that whatever "...vexation, harassment or oppressiveness is caused Central is not attributable to the choice of the forum." (App. A, p. 4a).

IV. The So-Called "Jurisdictional" Issue

Defendants argue that there is before this Court a "jurisdictional" issue (Pet. Br., p. 20-24) because a quorum of Central's directors was not served.

Defendants admitted the issue is not jurisdictional by arguing below that a quorum is needed here, only if there is another jurisdiction (Georgia) where service on a quorum may be had. By admitting that a quorum is not indispensable, they admitted correctly that the issue is not jurisdictional.

The issue is but another argument for *forum non conveniens*. Defendants unreasonably urge that minority stockholders must sue in Georgia, no matter how vexatious or oppressive it may be to them to do so. They urge this on formalistic grounds, not because Central is really controlled from there but despite the fact that it is not. Even the formalistic argument fails since Central's Board of Directors meets at will outside of Georgia (JA 21); and the minutes of the meetings of stockholders, Board of Directors and Executive Committee are now in New York with its Secretary (JA 18). The reality is that Central is controlled from here and here is where the suit should be tried.

The "quorum" argument is an obvious stalking horse for Central's desire to harass the minority stockholders. A "quorum" requires only 6 directors, and a majority vote of 4 is needed to declare dividends. (JA 20). Seven directors are employees of Southern or Central, and Central can bring a quorum to D. C. any time it wishes.

This nonjurisdictional issue was decided against defendants in District Court, and they failed to appeal. The Court of Appeals correctly ignored their belated contentions and so should this Court.

No conflict in circuits

Defendants rely on *Schuckman* v. *Rubenstein*, 164 F. 2d 952 (6th Cir. 1947), *cert. denied*, 333 U. S. 875 (1948) and argue that it conflicts with this Court of Appeals decision and that of the Third Circuit in *Kroese* v. *General Steel Castings Corp.*, 179 F. 2d 760 (3d Cir. 1950), *cert. denied*, 339 U. S. 983 (1950).

In *Kroese*, however, the Third Circuit recognized its result differed from that in *Schuckman*. Yet the Third Circuit expressly found no conflict of federal law with Schuckman, stating the issue turned not on federal law, but on Pennsylvania law which would refer to the law of Delaware where defendant corporation was chartered. Referring to *Schuckman*, *Kroese* stated:

> "While the Court in that case does not say anything about it, we take it that it must have been giving its views on Ohio law. Since we are declaring Pennsylvania law, as best we can, our conflicting decision brings nothing more than an expressed difference on the law of two states." 179 F. 2d, at 765.

Issue need not be decided here

Assuming, *arguendo*, there is a conflict in the Circuits, the issue is of little present national importance since the *Schuckman* decision has not been followed and seems abandoned, and rightly so.

As petitioners admit (Pet. Br., p. 23), *Schuckman* has not been followed by any subsequent decisions they cite, beginning with *Kroese, supra,* and including *Doherty* v. *Mutual Warehouse Co.,* 245 F. 2d 609 (5th Cir. 1957). The District Court so noted also, citing other cases in support of *Kroese* and showing the overwhelming criticism of *Schuckman* in the law reviews. (App. B, p. 10a). Petitioners had so little faith in this issue that they did not even appeal the decision against them.

Kroese decided the issue fairly, for the Third Circuit correctly pointed out that a quorum of directors is not necessary because ". . . when a court steps in and orders the payment of a dividend, the corporate affairs have reached the point where the judgment of the directors is no longer controlling." 179 F. 2d, at 763. Similarly, in *Williams* v. *Green Bay & W. R. Co.,* 326 U. S. 549, at 557 (1949), this Court found that in ordering payment of dividends, the court need go no further than in enforcing any contract to pay money.

As petitioners admit (Pet. Br., pp. 22, 23), to follow *Schuckman* would mean that minority stockholders may not be able to find any forum at all—a result rejected by *Kroese.* This unjust result has been rejected by the weight of authority, including this case, and there is no need for this Court to act.

V. The Court of Appeals Correctly Ended Defendants' Unreasonable Protracted Procedural Skirmishing

Defendants argue it is inconvenient to defend in D. C. only because they find it inconvenient to be called to account anywhere for their arbitrary actions. Georgia is less convenient for them than D. C.—they would have to transport their Chief Executive Officer, Comptroller, Treasurer and other officials to Georgia, together with the books of account located here. The high officials of South-

ern are also here and so are Southern's records as to Central.

The Court of Appeals correctly crushed Central's procedural roadblocks to trial on the merits. This Court, like the Court of Appeals, is well aware that errant corporations seek to harass stockholder actions and dodge trial on the merits. *Surowitz* v. *Hilton Hotels Corp.*, 383 U. S. 363 (1966), reh. denied, 384 U. S. 915. Like the defendant corporation in *Surowitz*, Central used procedural defenses to wear the stockholders down, to increase the cost of enforcing their rights and to escape giving an accounting of its stewardship.

This Court has pointed out the important role of minority stockholder suits in protecting stockholders against corporation insiders. The handicaps of minority stockholders are enormous, and Central should not be permitted to add to them by seeking further review of their unsubstantiated claims of inconvenience. This Court stated in *Surowitz*: "It has now been practically three years since the complaint was filed and as yet none of the defendants have even been compelled to admit or deny the wrongdoings charged. They should be." (383 U.S., at 374).

Respondents respectfully suggest the same situation obtains here. It is already 1½ years since the complaint was filed. Defendants have delayed that long in answering on the merits, despite the fact that suit in Georgia is no more convenient for Central than for the minority stockholders. The decisions not to pay Central preferred dividends are actually made here, in Southern's office building. Suit in Georgia would harass the plaintiffs and make their task many times harder and costlier—it would not reduce Central's inconvenience but add to it—but because of Central's (and Southern's) long purse, the tactical results would be to help them escape a just accounting.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

VICTOR A. ALTMAN
Counsel for Respondents
1001 15th Street, N. W.
Washington, D. C. 20005

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